

REGULATION NO. 16

ELECTRONIC FUND TRANSFER SYSTEM

WHEREAS, Section 5-2A-8 of the Alabama Banking Code provides that the Superintendent of Banks (the Superintendent) may, with the concurrence of a majority of the State Banking Board, promulgate reasonable regulations;

AND WHEREAS, the current Electronic Fund Transfer System Regulations (EFT Regulations) require out-of-state banks to, in effect, comply with the restrictions on interstate branching into Alabama as contained in the Alabama Interstate and International Banking Act of 1995 (Alabama Banking Code Section 5-13B-2) when such banks seek to establish remote service facilities (e.g. ATM's) within Alabama. No similar requirement is established by the EFT Regulations for Alabama banks wishing to establish remote service facilities in other states. However, legal requirements for reciprocity among states effectively apply the EFT Regulations' requirements to Alabama banks seeking to establish ATM's in other states. Provisions of Section 5-13B-2 specifically exclude remote service facilities and ATM's from the definition of a branch. Subsequent to the drafting of the EFT Regulations, the Comptroller of the Currency adopted the position that, because state branching laws do not govern the establishment of ATM's, national banks may establish ATM's across state lines.

The Superintendent of Banks concurs with the Section 5-13B-2 definition as it applies to ATM's. The Superintendent, while preserving reciprocity, wishes to maintain parity of state-chartered banks with national banks regarding the banks' power to establish ATM's across state lines.

NOW THEREFORE, be it known that the Superintendent, with the concurrence of the State Banking Board, does hereby promulgate the following regulation:

1. GENERAL STATEMENT. By the authority vested in the Superintendent of Banks by §5-2A-7 and §5-2A-8 of the Alabama Banking Code, rules and regulations are hereby promulgated to permit financial institutions headquartered in Alabama to utilize electronic funds transfer systems and remote unmanned service units in order to effectively serve their customers and the general public of the State of Alabama. The Comptroller of the Currency, the Office of Thrift Supervision, and National Credit Union Administration may also permit federally chartered Financial institutions which they regulate to engage in electronic funds transfer activities in accordance with these regulations.

2. PURPOSE. The purpose of these regulations is to permit an orderly development of off-premise electronic funds transfer systems in the State of Alabama, to allow financial institutions domiciled within the state to serve their customers more effectively and efficiently, and to provide for the marketplace to determine the growth and development of off-premise electronic funds transfer systems rather than by regulation. Unnecessary regulation which well might prevent the developing electronic fund transfer system from achieving its maximum potential is not intended. The primary purpose of these regulations is to remove any potential legal barriers and to regulate only to prevent unwise ventures and injury to the public interest. No financial institution is authorized to offer or provide additional or new services or is granted powers by virtue of these regulations that were not previously permitted.

A third party or non-financial institution may not accept a deposit except as agent for a financial institution empowered to accept deposit accounts or to engage in any banking or other financial services through the use of electronic fund transfer systems. However, a third party or non-financial institution is not prohibited from owning stock in a bank or other financial institution or from ownership, operation, management, or maintenance of off-premise electronic facilities.

Finance companies are not prohibited from accepting payments on loans, disbursing loan proceeds, transmitting credit information, or transferring funds by remote service units. However, accepting

deposit accounts and other banking activities not authorized for a non-banking financial institution is expressly prohibited.

3. DEFINITIONS. Financial Institution —Any federally chartered or state-chartered bank, savings association, or credit union.

Remote Service Unit —Any procedure or off-premise device used to engage in electronic funds transfer services.

Point of Sale Terminal (POS) —Equipment operated by a third party such as a retail store manned by employees of the third party and which handles financial transactions involving a financial institution.

Automated Teller Machine (ATM) —An off-premise terminal owned, leased, shared, or controlled by a financial institution which is unmanned but has the capability of processing withdrawals from deposit accounts, acceptance of deposits, transferring funds from one account to another or to other institutions, and performing other related banking services.

Automated Clearing House (ACH) —A clearing house to clear electronic or paperless transactions between financial institutions.

4. GENERAL REQUIREMENTS. Each state-chartered financial institution domiciled in Alabama must provide, in letter form, written notification to the Superintendent of Banks of its intent to establish a remote service unit if such unit is to be located in another state or, regardless of the location of the unit, if accounts may be opened by use of the unit. Such notification should be made no less than seven days prior to the date operations of the unit are to commence. The notice must provide a description of the unit and the activities to be conducted at the unit, the exact location of the unit, and the planned date the unit is to commence operations. The notice should indicate whether accounts may be opened by use of the unit. If accounts may be opened by use of the remote service unit, the letter must specify what safeguards and procedures are in place to identify the customers opening accounts. If the financial institution receives no notice of objection from the Superintendent within seven days, operations of the remote service unit may commence. Such approval by the Superintendent of a remote service unit established by an Alabama bank in another state shall not, however, constitute a waiver by the other state authority of its right to object should such unit be deemed to violate the branching laws of that state. If the Superintendent does object, the Superintendent may require such additional information as the Superintendent deems appropriate, and operations of the remote service unit may not commence until the Superintendent's written approval is received.

The provisions hereof may be utilized by the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration to grant written permission to the various federally chartered financial institutions domiciled in Alabama to utilize off-premise electronic funds transfer systems to serve their customers. However, any federally chartered institution must also conform to the sections entitled "Permitted Activities" and "Standards for Operation of Remote Service Units" contained in these regulations. In the case of an out-of-state financial institution seeking to establish an ATM in Alabama, the institution will be subject to the requirements regarding reciprocity. The Superintendent shall maintain the right to object should reciprocity regarding establishment of ATM's not be maintained by the federally chartered institution's home state.

Each out-of-state Financial institution must provide, in letter form, written notification to the Superintendent of Banks of its intent to establish a remote service unit in Alabama. Such notification should be made no less than seven days prior to the date operations of the unit are to commence. The notice must provide a description of the unit and the activities to be conducted at the unit, the exact location of the unit, and the planned date the unit is to commence operations. The notice should indicate whether accounts may be opened by use of the unit. If accounts may be opened by use of the remote, service unit, the letter must specify what safeguards and procedures are in place to identify the

customers opening accounts. If the financial institution receives no notice of objection from the Superintendent within seven days, operations of the remote service unit may commence. If the Superintendent does object, the Superintendent may require such additional information as the Superintendent deems appropriate, and operations of the remote service unit may not commence until the Superintendent's written approval is received.

An out-of-state financial institution must comply with the application or notification requirements of its home state or federal (in the case of federally chartered financial institutions) regulator. The Superintendent may accept notification to the out-of-state bank's home state or federal regulator (in the case of federally chartered financial institutions) in lieu of direct notification to the Superintendent provided the institution's regulator provides the Superintendent notice and the opportunity to object prior to final approval of the remote service unit. The Superintendent reserves the right to object to a remote service unit established by an out-of-state institution in Alabama should such unit be deemed to violate the branching laws of Alabama or should the institution's home state not maintain reciprocity regarding the treatment of remote service facilities.

Nothing contained in these regulations is intended to authorize, non-financial institutions to accept deposits for their own benefit or to offer services limited to financial institutions by the Alabama Banking Code.

5. PERMITTED ACTIVITIES. A financial institution may receive and act upon communications from its customers through use of remote service units in the same manner as if the customers were in the financial institution in person. A customer may request the withdrawal of funds from his own account or from a previously authorized loan or line of credit. A customer may deposit funds of any nature subject to verification by the financial institution. Cash may be dispensed to the customer, funds may be transferred to a third party account or to other financial institutions, and other services may be offered which are not expressly prohibited by, these regulations.

Any communication received from a depositor under the provisions of these regulations requesting that deposit funds be paid to the customer, transferred for his benefit, or transferred to the account of a third party shall constitute authority for "payment" as if it were a paper item and may be treated by the depository financial institution as a valid demand for payment. When cash is received by the customer as a withdrawal from a deposit account, payment may be considered final and the financial institution cannot be compelled to retract or void the transaction. This section does not prohibit the return of merchandise or affect the rights of a consumer to cancel a transaction with a third party when payment has been effected through a remote service unit. Where payment for goods or services is made through remote service units, any rights that the customer may have against the seller on any warranty, right to return goods, or to rescind a transaction will not be affected. Payments made for sales in this manner are not to deprive a person of any rights and protections now offered by existing laws concerning a cash or charge sale by conventional means. The purchaser of goods paid for in this manner has no right nor redress against the depository institution in regard to the purchase of goods if the only function of the financial institution was to honor the purchaser's request for payment through use of a remote service unit.

Any transaction initiated by a remote service unit shall be subject to verification by the financial institution whether by direct wire transmission or otherwise.

The sharing of remote service units is permitted among all possible owners and financial institutions. A requirement for sharing in some instances may be made by the Superintendent of Banks. Financial institutions are permitted to own, lease from others, or share in any manner the ownership, operation, or use of remote service units.

6. STANDARDS FOR OPERATION OF REMOTE SERVICE UNITS. The amount of any deposit received at a remote service unit can be subject to verification upon being received physically by the

depository financial institution. The depositor shall be informed if the deposit is subject to verification, and shall be sent by first class mail an advice no later than the next business day if the financial institution finds that it cannot comply with the receipt issued by the unit.

Consistent with Regulation E of the Federal Reserve Board, financial institutions must inform their depositors who use remote service units in writing of the extent of the depositor's liability for loss of funds because of use by others of stolen or lost debit cards, because of fraudulent use or misuse of information by a third party, or from the invasion of integrity of the system by others. There can be no liability to the customer or any loss sustained after the depository institution has been properly notified in the manner required by the depository institution that identification or debit cards have been lost or stolen or because of negligence on the part of the depository institution.

The depositor or user of a remote service unit must be notified in writing of any additional charges to be imposed against the depositor or user the depository institution for the depositor's or user's participation in or use of electronic fund transfer system services. Third party users of remote service units shall be informed, in the manner set forth in §5-5A-30 of the Alabama Banking Code, of any transaction fee imposed by the owner or operator of the remote service unit.

The financial institution must take reasonable and prudent safeguards and set up appropriate procedures in order to properly protect deposited funds and confidential information. Customers should be informed of the confidentiality of data collected or transmitted through the remote service unit to the extent required by Regulation E of the Federal Reserve Board. Furnishing of account balances, specific overdraft information, or similar specific dollar amounts is prohibited to anyone other than the customer or to a duly authorized employee of the financial institution. Procedures must also be established to protect the equipment and property of the financial institution from theft or damage and to insure the personal safety of the user of remote service units to the extent practicable. Liability insurance consistent with sound business practices must also be in force.

A financial institution may not use a depositor's social security number for identification. This does not preclude the obtaining of the number as needed for other purposes. A financial institution may not require or record more financial or biographical information on a customer or depositor other than what is germane to provide adequate service to the customer. A financial institution may not provide information about a customer that is secured for the purported operation of an electronic funds transfer system to any agent of state or federal government or to any other party except for the purpose that is germane to providing services to the customer, is authorized by the customer in writing, is specifically required by a valid court order or subpoena, or as otherwise required by law. Nothing contained herein shall be deemed to limit the ordinary and usual transfer of information to consumer reporting agencies.

7. CRITERIA FOR APPROVAL BY SUPERINTENDENT OF BANKS. The criteria for approval to be used by this office for participating in, owning, or operating any type of electronic fund transfer system shall be whether the applicant has an acceptable Uniform Financial Institution Rating; whether the applicant is considered to be well capitalized; whether the proposed system complies with the applicable branching laws of the state or local jurisdiction in which it is to be located; and, in the case of an out-of-state financial institution wishing to establish such system in Alabama, whether reciprocity is maintained by the institution's home state regarding the treatment of such systems. In the case of a system to which the Superintendent has objected, additional criteria may be considered at the discretion of the Superintendent.

The regulations are effective February 1, 1998. The Superintendent of Banks is authorized to issue additional or amended regulations concerning electronic funds transfer systems upon notice in writing to financial institutions.

s/Wayne C. Curtis
Superintendent of Banks